

1950



File No. C.A. Bijapur
50

Legal

DEPARTMENT

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BRANCH

Subject:— Criminal Appeals in
the High Court of Bombay
against the order of acquittal
from Bijapur District.

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C.A. Bijapur / 50

File No.

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C O N T E N T S. *Cr. A. Bijapur/5*
Legal Department File No.....

Sr. No.	Compilation No.	Subject	Pages.
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Judgment recorded by the High Court in Criminal
(By Government)
Appeal No. 419 of 1950, in the case of Rex vs. Yamannappa
Kanchappa.

The Government Pleader for the State.
Mr. H.F.M. Reddi for appellants.

Coram:- Bavdekar and Vyas, JJ.

7 8th August 1950.

Oral Judgment:-(per Vyas, J.)

This is an appeal by the Government of the State of Bombay against the acquittal of Yamanaya Kenchappa Durdundi, Yamanappa Dundappa Kanbur and Bharna Basappa Mantur (original accused nos. 1, 2 and 4) of an offence under section 302 of the Indian Penal Code.

The facts of the case have been fully stated by us in Criminal Appeal No. 189 of 1950 and it is not necessary to repeat them here.

Originally the three persons concerned were charged with an offence under sections 302 and 326 read with section 149 of the Indian Penal Code. The learned Sessions Judge of Bijapur convicted the ~~three~~ three men named above under sections 147, 326 and 323 read with section 149 of the Indian Penal Code. He acquitted them as far as the charge under section 302 of the Indian Penal Code was concerned. Against that acquittal this is an appeal by the Government of the State of Bombay.

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The learned Government Pleader has contended that since the assailants were armed with a gun, we should presume that the members of the unlawful assembly, which included the three persons concerned, must have known that the death of one or the other of the persons of Mudigouda's party was a likely consequence. It is to

be remembered in this case that there is plenty of evidence to show that the members of the unlawful assembly ~~had~~ had taken at least one gun with themselves. Witnesses Satyappa, Yallappa, Rudraya and Tayawa have clearly deposed that the assailants had a gun with them. Satyappa has said that accused No. 2 had fired at him with a gun. Yallappa has also deposed that before the assailants left Mudigouda's house a gun was fired by them. Rudraya has also deposed that one gun was fired by the assailants at him. In these circumstances we have no doubt in our minds that the assailants who went to ~~Mudigouda's~~ Mudigouda's house had taken a gun with ~~xxx~~ themselves. We are not going so far as to say that the members of the unlawful assembly must have intended to cause the death of somebody from Mudigouda's party. But, in view of the fact that they were ~~xx~~ armed with a gun, it is impossible to avoid the conclusion that the members of the unlawful assembly must have known that the death of one or the other of the persons of Mudigouda's party was a likely consequence. If they had armed themselves with hatchets, we would not have gone so far and would have thought that possibly the common object was to cause grievous hurt to people of Mudigouda's party. In view of the fact therefore that the members of the unlawful assembly had armed themselves with a gun, we are driven to the conclusion that the appellants who were members of that party must have known that the death of somebody from Mudigouda's party was a likely consequence. That being our view, the appellants would be clearly guilty under section 302 read with section 149 of the Indian Penal Code for causing the deaths of Shivalingappa Shivappa Yadhalli, Bhasappa Rajappa Chamber and Mudigouda Venkangouda Patil. Accordingly we allow the appeal and convict Yamanya Kenchappa Durdundi, Yamanappa Dundappa Kanbur and Bharna Basappa Mantur under section 302 of the Indian Penal Code and sentence them all under that section to transportation for life.

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Criminal

Judgment recorded by the High Court
Appeal No. 574 of 1950 (By Government) in the case of State
vs. Daulatrao Marsingarao Chavan (Original Accused). 105
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Mr. B.G.Thakore, Additional Assistant Government Pleader
for the State.

Mr. S.G.Patwardhan, with Mr. V.H.Gumaste, Advocate for the
Accused.

Coram:- Baydekar and Dixit, JJ.

24th November 1950.

Oral Judgment : (Per Dixit, J.):-

This is an appeal by the State against the acquittal of the respondent upon a prosecution under the Bombay Abkari Act.

The respondent is the owner of a hotel called "the Grand Hotel" in Bijapur. In September of 1947 Bhimangouda, a police Sub-Inspector, Anti-corruption Branch, received information that the accused had been selling liquor and that he had stored a large quantity of liquor in his hotel. He, therefore, decided to lay a trap, and secured a bogus customer called Jettappa and two panchas. Two notes of five rupees each were given to him after noting the numbers of the notes and he was also given an empty bottle in order to enable him to purchase liquor. Thus armed with two currency notes and the bottle the bogus customer was asked to visit the accused's hotel which he did. He went to the hotel, while sub-Inspector and the party stood outside. After some time the bogus customer came out with a bottle of liquor and with one rupee which was given to him by the shop-keeper.

Thereafter the Sub-Inspector in the company of the police party went to the hotel and there after accosting the accused started a search and at the search large quantity of liquor in bottles was discovered. In all

24 bottles were discovered in a store room, 4 bottles were also discovered in that room and in a room which is opposite to the store room were discovered some 13 bottles which happened to be empty but which smelt of liquor. Certain other articles were also found and a panchnama was duly made. The Sub-Inspector of the Anti-Corruption Branch then filed a formal complaint with the police. In course of time the accused was charge-sheeted and prosecuted before the lower Court for contravention of the provisions of section 14B of the Bombay Abkari Act and also for contravention of section 16 of the Act.

The defence of the accused can be gathered from the written statement which he filed in the Court. It is a lengthy statement and the principal point made in the written statement was that this was a false case brought against him by his enemies, that there was party politics in the local Municipality of which he happened to be a councillor and a Chairman of the Standing Committee and that the prosecution was the result of enmity against the accused.

The learned Magistrate upon the evidence adduced before him held that the charges levelled against the accused were absolutely false and upon that conclusion of his he made an order ^{acquitting} admitting the accused of the charges levelled against him.

Upon this appeal by the Government of the State of Bombay it is argued by the learned Additional Assistant Government Pleader that the order of the lower Court is contrary to the evidence in the case. The charges against the accused were two. There was a charge against the accused in respect of sale of liquor and also a charge against the accused in respect of possession of liquor. The charge against the accused in respect of sale of liquor can be disposed of very shortly. There is no doubt that there is the evidence of the bogus customer ~~existing~~

evidence of the bogus customer is that he was given two marked currency notes, that he visited the hotel and that he was given a bottle after which he came out of the hotel. Now, in order to accept the evidence of the bogus customer one would require some independent evidence. The bogus customer has gone back upon his own version and the Sub-Inspector, the complainant in the case, admitted that from the place where he was standing he could not possibly see as to what was happening in the hotel. There is no clear evidence to show that it was the accused who sold the liquor to the bogus customer and, in our opinion, this charge has not been satisfactorily proved against the accused.

With regard to the remaining charge of possession of liquor, the learned Magistrate came to the conclusion that this was absolutely a false case. But upon the evidence which we have perused with the assistance of the learned advocate we are unable to say that the case is a totally false case. The liquor which was found in the hotel of the accused was a large quantity of liquor. This will be seen from the panchnama which has been produced in the case. The hotel of the accused seems to be in an extensive building which can be seen from the sketch produced in the case. The panchnama recites that the party first went to the store room and the accused on being asked opened the lock of the store room. This suggests that it was with the key of the accused that the room was opened by the accused himself. Then in the store room ~~was~~ 24 bottles were recovered. Besides this, two measuring glasses and also a China Jar were recovered in that room. The party next went to a neighbouring room which was opposite to the store room and the panchnama recites that in that room were two cupboards which had been locked. The panchnama recites that the locks of the two cupboards

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Kulkarni was in the service of a Municipal Contractor by name Kasim Khan and the evidence shows that the accused was responsible for the removal of this Balwant from the service with the Municipal Contractor Kasim Khan. There is, therefore, some force in the contention that this Balwant Kulkarni is not a reliable and independent witness. Then there is the evidence of Subbanna. This Subbanna is a servant in a tea shop. He neither owns a house nor owns any property in Bijapur and his evidence is that the panchnama was written in the Grand Hotel. That is also the evidence of Bhimangouda and Mr. Patwardhan for the respondent has contended that in this case on account of the several mistakes which are to be noticed in the panchnama, the panchnama cannot be accepted as reflecting the correct position at the time of the search which was alleged to have been made on the occasion. He also suggested that it was possible for someone to plant the liquor in the hotel of the accused on the night of that day because the building ~~and in which~~ the hotel is situated is an extensive building and it was not possible for the accused to know as to what was happening on the other side of the building when the incident took place. Now, this suggestion is too far fetched to be accepted. If the evidence for the prosecution is believed, then the theory of planting would seem to be idle. According to the panchnama the store room was opened by the accused, and also the cupboards in the other room and it was only when the rooms were opened by the accused that the liquor was found in the two rooms.

Even so, the question is whether we should reverse the finding of the Court below- a finding entered in favour of the accused which is one of acquittal- and we are not satisfied that there is any good ground for reversing that finding. Several mistakes have been pointed out by Mr. Patwardhan on behalf of the respondent. The most glaring mistake in connection with this subject is

were opened by the owner and in those cupboards were found 16 empty bottles without labels. There were also other bottles, 13 in number, which had labels upon them. Then the panchnama recites that there were 4 bottles in the window of the store room. This panchnama has been signed by Balwant, Subbanna and Bassappa.

In support of the prosecution case Sub-Inspector Bhimangouda, Anti-corruption Branch, Bijapur, gave evidence. There is also the evidence of the two panch witnesses Balwant Kulkarni and Subbanna. There is also the evidence of Sub-Inspector Wagle. Now, if one peruses the evidence of Sub-Inspector Bhimangouda, there is really no reason as to why one should reject the prosecution case. Various suggestions were made to the witness in the course of his evidence. It was pointed out that the party feeling were running high on account of the Municipal politics in the town. It was also pointed out to him that this was an excise offence and it was possible for the witness to refer the matter to the Excise Officers. It was also suggested that the bogus customer was introduced by one Ramanna who was an enemy of the accused. It was also suggested that the panch witness Balwant Kulkarni had a clear motive in giving evidence against the accused.

Mr. Patwardhan for the respondent realising that there was a body of evidence in the case which it was not easy to reject, made a point that it was not possible to accept the panchnama made in the case as evidencing the search which took place on the night of the 14th September 1947. In support of the panchnama Balwant Kulkarni was examined. This Balwant Kulkarni is a newspaper servant. He admitted in his evidence that no panchnama was made in the store room. He also admitted that Baburao Powar, and the accused were rival candidates in the Municipal election at which the accused was a successful candidate. It will appear from the evidence that this Balwant

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the mention of two cupboards in the panchnama. Witness after witness who came before the Court stated that there were two cupboards in the room opposite to the store room. The learned Magistrate who appears to have visited the scene of offence has stated in his judgment that there was actually one cupboard and not two. This would mean therefore, that the statement in the panchnama is contrary to the actual facts in the case. It is possible that a mistake may have been committed, but if a mistake has been committed then question would arise whether it is possible to make a mistake like this viz. when there was only one cupboard in the room, mention should have been made of two cupboards in the room opposite to the store room. At any rate, Mr. Patwardhan is entitled to rely upon this circumstance as showing that no complete reliance need be placed upon the panchnama ~~showing that exhibits were discovered~~ produced in the case. Then a second instance of mistake was pointed out and that instance was this. The panchnama shows that 4 bottles were discovered upon a second search of the store room. The Sub-Inspector when asked stated that he did not remember whether the store room was visited once or twice, and when the panchnama was pointed out to him he admitted that according to the panchnama there was a second search made in the store room and it was at this second search of the store room that 4 bottles were noticed in the window. But if reference is made to the evidence in the case, it is stated that there was only one search of the store room. This is, therefore, a second instance in which a mistake has been made as regards the events which precisely occurred while the search was being conducted. Mr. Patwardhan also pointed out a circumstance in his favour with respect to a jar which it was stated was one of the things discovered in the room. The panchnama recites that only the bottles were noticed at that time and no other property was attached at that time. But that may be a small mistake looking to the fact that the jar has been specifically mentioned in the panchnama itself. A point was also made as regards th

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the sealing of the bottles. There is clear evidence to show that the bottles were sealed with the police seals. There is no doubt that there is a discrepancy as regards the question whether the bottles were labelled or not, but that is, in my opinion, immaterial. A point was also made about the fact that the liquor was not sent to the Chemical Analyser from some considerable time. That again is a small matter. Mr. Patwardhan argued finally that in the formal complain which was made concerning this offence three witnesses were mentioned, but only one of them has been examined in this case and his evidence is not in support of the prosecution story. A point was made of the fact that in the panchnama it was not mentioned that the accused gave the keys and it was with those keys that the ~~xx~~ room and the cupboards were opened. But I think there is nothing in the suggestion because reference to the panchnama shows that the locks were opened by the owner.

The learned Magistrate has, in a lengthy judgment, arrived at the conclusion that this was a totally false case. To that opinion we are unable to subscribe. There is in the record of this case evidence which it is not easy to reject. At the same time we must be satisfied that the case as brought against the accused is satisfactorily proved and we think that, when the facts in favour of and against the prosecution case are weighed carefully, the learned Magistrate was right in the conclusion which he reached in the case.

In the result, therefore, we hold that the order of acquittal was right, though it may be remarked that we are by no means satisfied that the reasoning in support of the order is in any sense convincing or sound. That being our view of the evidence in the case, we must hold that the order of acquittal is right, and this appeal will be dismissed.

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vs. Daulatrao Narsingarao Chavan (Original Accused).

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Two notes of five rupees each were given to him after
noting the numbers of the notes and he was also given an
empty bottle in order to enable him to purchase liquor.
Thus armed with two currency notes and the bottle the
bogus customer was asked to visit the accused's hotel
which he did. He went to the hotel, while sub-Inspector
and the party stood outside. After some time the bogus
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Even so, the question is whether we should reverse the finding of the Court below- a finding entered in favour of the accused which is one of acquittal- and we are not satisfied that there is any good ground for reversing that finding. Several mistakes have been pointed out by Mr. Patwardhan on behalf of the respondent. The most glaring mistake in connection with this subject is

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